
(1982) 08 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 157/77

Bhilwara Sahkari Upbhokta Wholesale Bhandar Ltd. and
Another

APPELLANT

Vs

Prescribed Authority and Another

RESPONDENT

Date of Decision : 11-08-1982

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 75

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 28A

Citation : (1982) RLW 682 : (1982) WLN 478

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—Both these writ petitions raise common questions for determination and, therefore, they are being disposed of by this common order.

2 The petitioner in both these writ petitions is Bhilwara Sahkari Upbhokta Wholesale Bhandar (hereinafter referred to as the "Sahkari Bhandar"). It is a co-operative society registered under the provisions of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as the "Act") and is running a wholesale Bhandar at Bhilwara. Shyamlal, respondent No. 2 in civil writ petition No. 156/77 was appointed as Assistant Accountant cum-clerk in the Sahkari Bhandar with effect from June 30, 1973. It is alleged that on inspection it was found that the said respondent had misappropriated money of the Sahkari Bhandar during the year 1974-75 and the matter was brought to the notice of the Board of Directors of the Sahkari Bhandar by the Executive Officer of the Sahkari Bhandar and it was also brought to the notice of the said respondent by letter dated 18th March, 1975 and thereupon the said respondent in his letter dated 19th March, 1975, admitted his fault and also made good the loss which was suffered by the Sahkari Bhandar. It is further alleged that after a further enquiry into the matter a charge sheet was served on respondent No. 2

December, 16, 1975 and the said respondent submitted his reply to the said charge sheet on December 23, 1975. The matter was thereafter discussed before the Board of Directors of the Sahkari Bhandar and it was decided that respondent No. 2 may be removed from service without any stigma and, in pursuance of the aforesaid decision, an order dated December 30, 1975 was passed by the Executive Officer of the Sahkari Bhandar whereby the services of respondent No. 2 were terminated with effect from December 31, 1975. The reasons that was given in the said order was insufficiency of work and financial condition of the Sahkari Bhandar. On February 9, 1976 respondent No. 2 submitted an application u/s 28A of the Rajasthan Shops and Commercial Establishments Act, 1958 (hereinafter referred to as the "Shops and Commercial Establishments Act") before the Prescribed Authority under the Shops and Commercial Establishments Act (hereinafter referred to as the "Prescribed Authority"). The Prescribed Authority by its order dated March 22, 1977 allowed the said application of respondent No. 2 and held that the termination of the services of respondent No. 2 by the Executive Officer of the Sahkari Bhandar was in contravention of the Rules and the Prescribed Authority, therefore, set aside the order dated December 30, 1975 with regard to the termination of the service of respondent No. 2 and directed that respondent No. 2 may be re-instated in service from December 30, 1975, and respondent No. 2 was entitled to payment of back wages from December 30, 1975. Aggrieved by the aforesaid order dated March 22, 1977 passed by the Prescribed Authority, the Sahkari Bhandar has filed civil writ petition No. 156/77.

3. Bhupalsingh, respondent No. 2 in civil writ petition No. 157/77, entered the service of the Sahkari Bhandar on February 2, 1968 and during the period from July 1, 1972 to February 2, 1975 he was working as Accountant with the Sahkari Bhandar. It is alleged that during the course of inspection it was found that the said respondent has committed embezzlement of the funds of the Sahkari Bhandar and had also committed other irregularities while working as Accountant and a Committee was constituted to enquire into the matter. It is further alleged that respondent No. 2 was also given a notice to appear before the said Committee to place his defence. It is also alleged that after taking into consideration the report submitted by the Enquiry Committee and after giving opportunity to respondent No. 2 to make his submissions, about the charges levelled against him, the Board of Directors of the Sahkari Bhandar on June 18, 1976 decided to remove respondent No. 2 from service and on the basis of the aforesaid decision of the Board of Directors, the Executive Officer of the Sahkari Bhandar passed an order dated June 22, 1976 whereby the services of respondent No. 2 were terminated with immediate effect on June 30, 1976. Respondent No. 2 submitted an application u/s 28A of the Shops and Commercial Establishments Act before the Prescribed Authority and by order dated March 22, 1977 the Prescribed Authority allowed the said application and set aside the order dated June 22, 1976 terminating the services of respondent No. 2 and directed that respondent No. 2 be re-instated in service with full back

wages with effect from June 22, 1976. Feeling aggrieved by the aforesaid order passed by the Prescribed Authority the Sahkari Bhandar has filed civil writ petition No. 157/77.

4. I have heard Shri M.C. Bhoot the learned Counsel for the Sahkari Bhandar in both the writ petitions and Shri M L. Kala the learned Counsel for the respondent employees Shyamlal and Bhupal Singh.

5. The first contention urged by Shri Bhoot was that in view of the express provisions contained in Section 75 of the Act. the Prescribed Authority had no jurisdiction to entertain the application submitted by the respondent employees u/s 28 A of the Act and all the proceedings before the Prescribed Authority, including the order dated March 22, 1977 passed by the Prescribed Authority, were without jurisdiction. Section 75 of the Act provides as under:

75. Disputes which may be referred to arbitration--(1) Notwithstanding anything contained in any law for the time being in force if any dispute touching the constitution, management, or the business of a co-operative society arises:

(a) among members, past members and persons claiming through a member, past member or deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer agent or employee of the society, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employees of the society, or

(d) between the society and any other co-operative society.

(e) between the society and the surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society or with whom the society has or had transaction u/s 66, whether such a surety is or is not a member of a society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not.

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to

it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not.

(c) any dispute arising in connection with the selection of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

6. A perusal of Section "5 shows that under Sub-section (1) disputes referred to in Clause (a) to (e) of the said sub-section, provided they are disputes touching the constitution, management or the business of a co-operative society, are required to be referred to the Registrar of Co-operative Societies for decision & the jurisdiction of the courts to entertain any suit or the proceeding in respect of such dispute has been expressly barred. By Sub-section (2) the disputes referred to in Clauses (a) to (e) of that sub-section are, by statutory fiction, deemed to be disputes touching the constitution, management or the business of a co-operative society. Sub-section (3) gives finality to the decision of the Registrar of Coperative societies on the question whether a dispute referred to the Registrar u/s 75 is a dispute touching the constitution, management or the business of a co-operative society.

7. In the present cases disputes had arisen between the Sahkari Bhandar and the respondent employees on account of the termination of the services of the said employees. A dispute between a co-operative society and its employees falls in Clause (c) of Sub-section (1) and the disputes between the Sahkari Bhandar and the respondent employees would be covered by Sub-section (1) of Section 75 if the said disputed tan be said to be disputes touching the constitution, management or the business of the Sahkari Bhan-dar. The said disputes do not fall within the ambit of Clauses (a) to (e) of Sub-section (2) and, therefore, they cannot be treated as disputes touching the constitution, management or business of the Sahkari Bhandar by virtue of the statutory fiction created by Sub-section (2). Hence it will be necessary to determine whether the aforesaid disputes between the Sahkari Bhandar and the respondent employees relating to the legality of the orders terminating the Services of those employees can be regarded as disputes touching the constitution, management or the business of the Sahkari Bhandar. Shri Bhoot does not contend the said disputes can be regarded as touching the constitution of the Sabkari Bhandar, but he has submitted that the said disputes are touching the management of the Sahkari Bhandar as well as disputes touching the business of the Sahkari Bhandar.

8. I will first take up the question whether the aforesaid disputes can be regarded as disputes touching "he business of the Sahkari Bhandar. The expression "touching the business of a co-operative society" is found in similar provisions enacted in other States and the said expression has come up for

consideration before the Supreme Court in a number of cases.

9 In *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, the Supreme Court was dealing with the provisions of the Maharashtra Co-operative Societies Act, 1961. Section 91 (1) of the said Act made provision for reference of disputes touching the constitution, elections of the office bearers, management or business of the Society to the Registrar for arbitration. The Supreme Court held that the word "business" in the expression "touching the business of a Society" in Section 91(1) of the Maharashtra legislation had been used in a narrower sense and it means the actual trading or commercial or similar business activity of the society which the Society is authorised to enter into under the Act and the Rules and its bye-laws and that a dispute between a tenant and a member of the Co-operative Bank in a building which has subsequently been acquired by the bank cannot be said to be a dispute touching the business of the Cooperative society, viz, the Bank.

10. In *Coopreative Central Bank Ltd. v. Additional Industrial Tribunal, Andra Pradesh* 1970 SC 245 the Supreme Court was dealing with the provisions of the Andhra Pradesh Co-operative Societies Act, 1964. Section 61 of the said Act contained a provision with regard to reference of the disputes touching the constitution, management or the business of the Society to the Registrar of Co-operative Societies. In that case the question which arose was whether a dispute between a co-operative society and its employees relating to alterations of the conditions of service of the employees could be said to be a dispute touching the business of the Co-operative Society. The Supreme Court, after referring to its earlier decision in *Deccan Merchants Cooperative Bank v. Dalichand* (supra), held that the aforesaid dispute between the Co-operative Central Bank and its employees relating to the alteration of the conditions of service would not be said to be a dispute touching the business of the co-operative society. In the said case the Supreme Court has observed:

It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society" in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions or service of the workmen employee by the society cannot be held to be a dispute touching the business of the society.

11. In *Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others*, the Supreme Court was dealing with the provisions of Section 96 of

the Gujarat Co-operative Societies Act, 1962 which laid down that any dispute touching the constitution, management or business of a society must be referred to the Registrar of Co-operative Societies. The question was whether the dispute between the Co-operative Bank and one of its employees relating to the termination of his service could be regarded as a dispute touching the business of the society. The Supreme Court, after referring its earlier decisions in Deccan Merchants Co-operative Bank (supra) and Co-operative Central Bank Ltd. case (supra) held that the said dispute could not be regarded as a dispute touching the business of the co-operative society.

12. Similarly, in U.P. Cooperative Cane Union Federation Ltd. and Another Vs. Liladhar and Others, the Supreme Court, while dealing with similar provisions contained in Rule 115 of the U.P. Co-operative Societies Rules, 1936, has held that a dispute arising out of disciplinary proceedings resulting in dismissal of a godown keeper of a co-operative society could not be said to be a dispute touching the business of the society which was required to be referred to the Registrar of Co-operative Societies under Rule 115 of the U.P. Co-operative Societies Rules, 1976.

13. Shri Bhoot has pointed out that in Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, which came up for consideration before the Supreme Court in Cooperative Central Bank case (supra) "a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society" had been expressly excluded from the ambit of Section 61 (1) and that there is no such express exclusion of such disputes from the ambit of Section 75 of the Act. It is true that in Section 61 of the Andhra Pradesh legislation contained a provision expressly excluding the dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society but the decision of the Supreme Court in Co-operative Central Bank case (supra) did not turn on the aforesaid express exclusion and is based on the true meaning of the expression "touching the business of the society." In this context it may be said that even though Section 96 of the Gujarat Co-operative Societies Act, 1962 did not contain the express provision similar to that contained in the Andhra Pradesh legislation, the Supreme Court gave the same meaning to the expression "touching the business of the society". In my opinion, therefore, the aforesaid decisions of the Supreme Court are fully applicable for construing the expression "touching the business of a Society" contained in Section 75(1) of the Act, and in view of the aforesaid decisions of the Supreme Court it must be held that the disputes that arose between the Sahkari Bhandar and the respondent employees on account of termination of services of the said employees cannot be regarded as a dispute touching the business of the Sahkari Bhandar.

14. The next question which arises for consideration is whether the said dispute between the Sahkari Bhandar and the respondent employees can be regarded as a dispute touching the management of the Sahkari Bhandar. Shri Bhoot has

submitted that in the decisions referred to above, the Supreme Court has not considered the question as to whether the dispute between a co-operative society and its employee with regard to termination of services of the employee can be said to be a dispute touching the management of the society. In my opinion Shri Bhoot is not right in his submission that the question whether a dispute between a co-operative society and its employee relating termination of the service of the employee could be regarded as a dispute touching the management of the co-operative society has not been considered by the Supreme court in any of the above referred decisions In Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr. (supra) the Supreme Court have construed the expression "dispute touching the management of the society" contained in Section 96 (1) of the Gujarat Co-operative Societies Act, and have observed:

We will now, focus attention on the expression management of the society" used in Section 96 (1) of the Act of 1961. Grammatically one meaning of the term "management" is : "the Board of Directors" or "the apex body" or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the society. In this sense, it may not include the individuals who under the over all control of that governing body or Committee, run the day-today business of the Society. (See words and Phrases by West Publishing Co. Permanent Edition, vol. 26, Page 357, citing, Warner & Swasey Co. v. Rusterholz D.C. Min 41 F. supp 398, 505). Another meaning or the term "management" may be; "the act or acts of managing or governing by direction, guidance, superintendence, regulation and control of the affairs of a society."

A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholakia. The use of the term "management" in such a wide sense in Section 96 (1) appears to us, to be very doubtful

Be the as it may, what has been directly bidden "Out-of-bounds" for the Registrar by the very scheme and objects of the Act, cannot be indirectly inducted by widening the connotation of "mange-meni". A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression "any dispute", a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a civil court is outside the scope of the expression "touching the management of the Society" used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.

The aforesaid observations show that the Supreme Court were of the view that taking into consideration the scheme and object of the legislation dealing with Co-operative societies, the word "management" cannot be given a wide connotation

and that a dispute raised against a Co-operative Society where a discharged servant, claims reinstatement in service is from its very nature outside the scope of the expression "touching the management of the Society" and that the Registrar of Co-operative Societies has no jurisdiction to deal with such a dispute which falls within the jurisdiction of industrial court under the Bombay Industrial Relations Act. The observations of the Supreme Court in the aforesaid decision are fully applicable to the present case because here also the dispute that was raised against the Shakari Bhandar by the respondent employees involved granting of a relief, such as reinstatement in service with back wages, which is not enforceable under the general law and is outside the scope of the expression ""touching the management of the society" contained in Section 75(1) of the Act. The aforesaid dispute falls within the jurisdiction of the Prescribed Authority u/s 28 A of the Shops and Commercial Establishment Act.

15. In this context it may be pointed out that Section 75 of the Act, is in the nature of a general provision dealing with all types of Co-operative Societies including societies which may not necessarily be engaged in an activity that might make the provisions of the Shops and Commercial Establishment Act, applicable to them and Section 28A of the Shops and Commercial Establishments Act is a special provision applicable to those Co-operative Societies which are engaged in activity that would render the provisions of the Shops and Commercial Establishments Act applicable to them and it covers only certain types of disputes, viz., disputes arising between the Co-operative Society and its employee on account of termination of their services. Since a special provision must prevail over the general provision, Section 75 of the Act must be so construed as to exclude from its ambit the disputes covered by Section 28A of the Shops and Commercial Establishments Act. We arrive at the same conclusion also by applying the principle of harmonious construction which postulates that in the event of conflict between two statutory provisions an effort should be to construe them harmoniously in a way that both the provisions can be given effect to. Such a result can be achieved if the provisions of Section 75 of the Act are construed narrowly to exclude from its ambit the disputes covered by Section 28A of the Shops and Commercial Establishments Act.

16. For the reasons aforesaid, I am unable to accept the first contention urged by Shri Bhoot that in view of the provisions contained in Section 75 of the Act, the Prescribed Authority had no jurisdiction to entertain the applications submitted by the respondent employees u/s 28A of the Shops and Commercial Establishments Act and all the proceedings taken by the Prescribed Authority on those applications are without jurisdiction.

17. The second contention urged by Shri Bhoot was that there has been no contravention of the provisions of Section 28A of the Shops and Commercial Establishments Act and that the Prescribed Authority has erred in setting aside the orders passed by the Executive Officer of the Shakari Bhandar terminating the services of the respondents employees. In this regard Shri Bhoot has

submitted that prescribed Authority has misconstrued the powers conferred upon it u/s 28A and has set aside the orders terminating the services of the respondent employees on untenable grounds. According to Shri Bhoot all that the Prescribed Authority was required to do was to find out whether there was reasonable cause for dispensing with the services of the respondent employees and whether it was necessary to serve a notice on the respondent employees and if so whether the said notice had been served upon.

18. Section 28A of the Shops and Commercial Establishments Act reads as Under:

28--A Notice of Dismissal or discharge by employer:

(1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice.

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

(2) Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely:

(a) that there was no reasonable cause for dispensing with his services;

or (b) that no notice was served upon him as required by Sub-section (1);

or (c) that he had not been guilty of any misconduct;

Provided that the prescribed authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

(3) The Prescribed Authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefore:

(4) While passing an order under Sub-section (3), the prescribed authority shall have power to give relief to the employee by way of re-instatement or by awarding money compensation or by both.

(5) The decision of the prescribed authority under this section shall be final and binding both on the employer and the employee,

19. A perusal of the provisions contained in Section 28 A of the Shops and

Commercial Establishments Act shows that in the main part of Sub-section (1) restriction has been placed on the right of the employer to dismiss or discharge his employee who has been in such employment continuously for a period of not less than six months and it has been prescribed that such an employee can be dismissed or discharged only for a reasonable cause and after give him at least one month's prior notice or on paying him one month's wages in lieu of such notice. The proviso to Sub-section (1) of Section 28 A dispenses with the aforesaid notice in cases where the services of the employee are dispensed with for such misconduct as may be defined in the rules made by the State Government on that behalf and is supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner. In so far as the proviso to Sub-section (I) of Section 28A is concerned, it may be observed that the said proviso postulates the making by the State Government of a rule defining the acts of misconduct. In exercise of the aforesaid power conferred under the proviso, the State Government has made Rule 24A of the Shops and Commercial Establishments Rules, 1959 which enumerates various acts which may be treated as misconduct for the purpose of the proviso to Sub-section (!) of Section 28 A of the Shops and Commercial Establishments Act. The aforesaid rule 34A. was inserted in the Rajasthan Shops and Commercial Establishments Rules, 1959 by the Rajasthan Shops & Commercial Establishment (Amendment) Rules, 1972, which were published in the Rajasthan Rajpatra dated January 28, 1977. Since Sub-section (1) of Section 40 of the Shops and Commercial Establishments Act prescribed that the State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of the Shops and Commercial Establishments Act it must be held that notification in the official gazette is a condition precedent for making the rules u/ s 40 of the Shops and Commercial Establishments Act and the Rajasthan Shops and Commercial Establishments (Amendment) Rules, 1972, whereby Rule 24A has been inserted in the Rajasthan Shops and Commercial Establishments Rules, 1959, must be said to have been made only on January 28, 1977 when the said rules were notified in the Rajasthan Rajpatra. In other words, Rule 24A whereby acts which can be treated as misconduct for the purpose of proviso to Sub-section (1) of 28A were specified came into force only on January 28, 1977 and the proviso to Sub-section (1) of Section 28A became enforceable only on that date i e on Jan., 28, 1977. The orders regarding the termination of the services of the respondent employees in the present writ petitions were passed before January 28, 1977 and, therefore, the provisions of the proviso to Sub-section (1) of Section 28 A would not be attracted to the aforesaid orders or even if it be assumed that the service of the respondent employees have been terminated on the ground of misconduct, it was necessary for the Sahkari Bhandar to give one months" notice or pay one month's salary in lieu of wages to the respondent employee as required under the main part of Sub-section (1) of Section 28A.

20. The provisions of Sub-section (1) of Section 28A of the Shops and Commercial Establishments Act have been considered by this Court in Peer

Ahmed Khan v. Prescribed Authority under the Shops and Commercial Establishment Act, Jodhpur (S.B. Civil Writ Petition No. 590 of 1978 decided on April 21, 1980). In that case it has been observed that in relation to an employee who has been in employment continuously for a period of not less than six months, Sub-section (1) of Section 28A has placed the following restrictions on the right of the employer to dismiss or discharge the said employee from employment:

(i) The dismissal or discharge must be for a reasonable cause; and

(ii) It must be done after:

(a) giving the employee at least one month's notice, or

(b) on paying one month's wages in lieu of such notice:

In the said case it has also been held that the requirement of prior notice or payment of wages in lieu of notice contained in Section 28 A of the Shops and Commercial Establishments Act is similar to that contained in Section 25-F of the Industrial Disputes Act, 1947 and that an order terminating the services of an employee who is covered by the provisions of Section 28A of the Shops and Commercial Establishment Act would not be effective unless the employer gives one month's notice or one month's pay at the time he has served with the order.

21. Shri Bhoot has submitted that the Prescribed Authority has not applied its mind to the requirements of Sub-section (1) of Section 28A of the Shops and Commercial Establishments Act and has set aside the orders passed by the Executive Officer of the Sahkari Bhandar terminating the services of the respondent employee without considering as to whether the respondent employees have been paid one month's wages in lieu of the notice. The submission of Shri Bhoot was that the orders passed by the Prescribed Authority should be quashed and the case should be sent back to the Prescribed Authority for deciding the matter afresh in the light of the requirement of Sub-section (1) of Section 28A. I am unable to accept the aforesaid contention.

22. In so far as civil writ No. 157/77 relating to the termination of service of Bhupal Singh is concerned, I find that the Prescribed Authority in its order dated March 22, 1977 has, on basis of the order of termination dated June 22, 1976, held that respondent Bhupal Singh was neither given one month's prior notice nor was he paid one month's salary in lieu of notice and that the aforesaid order of termination was, therefore, not according to rules. I have also perused the order of termination dated June 22, 1976 and I find no reason to disagree with the aforesaid finding recorded by the Prescribed Authority. In view of the finding of the Prescribed Authority that Bhupal Singh was neither given one month's prior notice nor was he paid one month's salary, it must be held that there has been non-compliance within the provisions of Sub-section (1) of Section 28A of the Shops and Commercial Establishments Act and the mere fact that the Prescribed Authority has not recorded the finding on the question as to whether

or not there was reasonable cause for terminating the service of Bhupal Singh does not vitiate the order passed by the Prescribed Authority setting aside the order of termination dated June 22, 1976 and directing the re-instatement of respondent Bhupal Singh with full back wages.

23. In civil writ Petition No. 156/77 the reason given for terminating the services of respondent Shyamlal in the order of termination dated December 30, 1975 was insufficiency of work and financial condition of the Sahkari Bhandar. The said order does not show that one month's prior notice was given to Shyamlal. Nor does it show that one month's pay in lieu of notice was paid to Shyamlal before he was relieved from service on December 31, 1975 in pursuance of that order. In the application which was filed by Shyamlal u/s 28A of the Shops and Commercial Establishments Act before the Prescribed Authority (a copy of which has been annexed as Annex. 6 in the writ petition) it was averred by respondent Shyamlal that the mandatory requirement of Section 28 a had not been complied with and that one month's notice had not been given. The said application also contains an averment that Shyamlal was not given notice pay. The order of the Prescribed Authority dated March 22, 1977 shows that the Sahkari Bhandar did not adduce any evidence before the Prescribed Authority. In para 2 of the writ petition it has been asserted that the services of respondent Shyamlal were terminated on paying one month's salary in lieu of one month's notice and one month's salary has credited in his account and in that connection a copy of the bill of the advance salary of respondent Shyamlal and two other employees has been annexed as Annex. 5 to the writ petition. A perusal of the aforesaid copy of the bill of advance salary shows that the said bill relates to the month of January 1976 and it was prepared on February 5, 1976 which means that the amount of the salary for the month of January 1976 was credited to the account of respondent Shyamlal on or after February 5, 1976. It cannot be, therefore, said that one month's salary in lieu of one month's notice had been paid to respondent Shyamlal at the time of the service of the order dated December 30, 1975 or before he was relieved from service on December 31, 1975. In the circumstances, it must be held that there has been non-compliance with the provisions of Sub-section (1) of Section 28A of the Shops and Commercial Establishment Act in as much as the Sahkari Bhandar has neither given one month's prior notice nor paid one month's salary in lieu of notice to respondent Shyamlal. In these circumstances, I am of the opinion that no purpose would be served by setting aside the order of the prescribed Authority and remanding the matter for deciding it afresh.

24. For the reasons aforesaid, I find no merit in these writ petitions and the same are, therefore, dismissed. But in the circumstances of the case, there will be no order as to costs.